NO. 08-1243

IN THE
UNITED STATES SUPREME COURT

October, 2008 Term

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

KOBEAY QURAN SWAFFORD,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. SINCE IT IS UNDISPUTED THAT PETITIONER LODGED THEIR DETAINER AGAINST RESPONDENT AT THE FEDERAL INSTITUTION WHERE RESPONDENT WAS SERVING A TERM OF IMPRISONMENT, AND BOTH PETITIONER AND RESPONDENT INVOKED ITS TERMS, DID THE INTERSTATE AGREEMENT ON DETAINERS (IAD) CLEARLY APPLY AND THE PETITIONER ADMITTED FAILURE TO BRING RESPONDENT TO TRIAL WITHIN 180 DAYS REQUIRED DISMISSAL?

II. ARE THERE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THE MICHIGAN SUPREME COURT DECISION BECAUSE THE TRIAL COURT LACKED JURISDICTION TO PROCEED TO TRIAL UNDER STATE COURT RULES AND THE DOCTRINE OF ESTOPPEL APPLIES GIVEN PETITIONER'S AGREEMENT TO BE BOUND BY THE IAD IN THIS CASE?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

OPINIONS BELOW

Respondent accepts Petitioner's Opinions sets forth in their Petition for Writ of Certiorari.

JURISDICTION

Respondent accepts Petitioner's Jurisdiction statement in their Petition for Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

COUNTER-STATEMENT OF THE CASE

Respondent, KOBEAY QURAN SWAFFORD, sets forth the following facts to address the misstatement or omissions of facts by Petitioner relevant to the case, pursuant to Rule 15(2) of the Rules of the Supreme Court of the United States:

On June 1, 2004, the Petitioner (Wayne County Prosecutor's Office, representing the State of Michigan) sent a written detainer to the United States Marshals in Tennessee against Respondent Swafford (Respondent's Appendix, Exhibit A). In relevant part, the document states:

Please enter the attached documents (Complaint and Warrant) as a detainer against this defendant (emphasis added).

Petitioner's contention that the detainer was a "hold" is disingenuous given the explicit language used by Petitioner. Furthermore, the Michigan Supreme Court made a factual finding that this document is "a written detainer" (Petitioner's Appendix C, pg. 24A).

After Respondent's federal sentence, the detainer sent to the United States Marshal was forwarded to the Federal Correctional Institution (FCI) at Beckley, West Virginia (hereinafter referred to as FCI) where Respondent was incarcerated (Petitioner's Appendix B, pg. 6A).

On March 2, 2005, Scott Trainum, the Legal Instruments Examiner at the FCI at Beckley had possession of Petitioner's written detainer of June 1,

2004. He telephoned Robert Purdue of the Wayne County Prosecutor's Office and verified the request to lodge the detainer against Respondent (Petitioner's Appendix C, pg. 25A; Respondent's Appendix B). Petitioner then caused the Clerk of the Court to forward certified copies of the state Warrant and Complaint to be sent to the federal institution (Petitioner's Appendix B, pg. 21A; Respondent's Appendix, Exhibits A and C). Contrary to Petitioner's assertion, Petitioner did cause the filing of the state warrant and complaint for murder with the FCI on March 3, 2005 and verified their detainer with the FCI.

At no time did Petitioner ever lift or withdraw their detainer.

On March 2, 2005, Respondent was notified of the State detainer by way of a Notice of Untried Indictment and made a signed request to the Federal Bureau of Prisons for disposition of the outstanding charges in Michigan under Article III of the IAD (Respondent's Appendix, Exhibit D).

On March 2, 2005, the Federal Bureau of Prisons sent notice to the Wayne County Prosecutor that Respondent was seeking disposition of the outstanding charges of First Degree Murder and disposition in accordance with Article III of the Interstate Agreement on Detainees (IAD) Act which required that Respondent be brought to trial within 180 days of the receipt of the request (Respondent's Appendix, Exhibit E). In relevant part, this notice states: "**The above named Respondent is requesting disposition on**

the outstanding charges you have filed against him as a detainer . . . For: 1st Degree Murder" (emphasis added). Along with this request, the Federal Bureau of Prisons sent to the Wayne County Prosecutor the appropriate notices and forms, including the Detainer Action Letter, IAD - Offer to Delivery Temporary Custody, IAD - Placement of Imprisonment and Notice of Untried Indictment (Respondent's Appendix, Exhibits F, F-1, F-2). The Detainer Action Letter, dated March 2, 2005 addressed to the Wayne County Prosecuting Attorney, clearly states that the reference is regarding "Lodging of Detainer" for inmate "Swafford, Kobeay" and states: **"XXX A detainer has been filed against this subject in your favor for: 1st Degree Murder"** (emphasis in original) (Respondent's Appendix, Exhibit F).

It is undisputed, the Wayne County Prosecutor and Clerk's Office received the above documents on March 7, 2005 by certified mail (Respondent's Appendix, Exhibit G; Petitioner's Appendix C, pg. 25A).

On June 4, 2005, the Federal Bureau of Prisons notified the Wayne County Prosecutor that (1) Respondent had requested disposition of the outstanding charges, (2) the necessary forms under the IAD were sent via certified mail, return receipt on March 2, 2005, (3) that the forms were received by the Wayne County Prosecutor on March 7, 2005 and that the completed forms had not been received. The Wayne County Prosecutor was notified:

> As you know, once an inmate requests disposition under the IAD they must be brought to trial within 180 days of your receipt of the request. Ninety of the allowed 180 days elapsed effective June 25, 2005.

(Respondent's Appendix, Exhibit H).

It is undisputed that on June 15, 2005, Assistant Wayne County Prosecutor, Kellie Gleason, executed the "Agreement on Detainers" forms sent by the Federal Bureau of Prisons (Prosecutor's Certification, Evidence of Agent's Authority to Act for Receiving State, Prosecutor's Acceptance of Temporary Custody and Request for Disposition of Detainee) and returned them to the federal institution, thus invoking the IAD (Respondent's Appendix, Exhibits I, I-1, I-2; Petitioner's Appendix C, pg. 25A), thus invoking the IAD.

In relevant part, the prosecutor certified to abide by certain terms of custody of Respondent "in connection with request for custody" (Respondent's Appendix, Exhibit I). Form VI, entitled "Agreement on Detainers" is an IAD form executed on June 15, 2005 wherein the Wayne County Prosecutor, Extradition Unit, agreed to take custody of the Respondent in accordance with Article V(b) of the IAD (Respondent's Appendix, Exhibit I-1). Form VII of the Agreement on Detainers, also executed by Assistant Wayne County Prosecutor, Kellie Gleason, and Wayne County Circuit Judge, Timothy Kenny, provides that the prosecutor's office would accept custody of Respondent and bring him to trial "within the time

specified in Article III(a) of the "Agreement on Detainers" (Respondent's Appendix, Exhibit I-2).

Therefore, it is undisputed that Petitioner invoked the IAD and agreed to its terms (Petitioner's Appendix C, pg. 38A). As such, they are estopped from seeking to avoid its application.

On September 16, 2005, the Federal Bureau of Prisons notified the Wayne County Prosecutor that 180 days under the IAD had expired and that Respondent Swafford could petition the court for dismissal of the outstanding charges (Respondent's Appendix, Exhibit J).

On October 5, 2005, the Detroit Police Department took custody of Respondent Swafford from FCI at Beckley pursuant to the IAD and the detainer filed by the Wayne County Prosecutor (Respondent's Appendix, Exhibit K). The method on the form indicates "IAD" and the box for Detainer is marked "yes" (*Id.*; Respondent's Appendix, Exhibit K; Petitioner's Appendix B, pg. 8A; Petitioner's Appendix C, pg. 40A).

Once again, it is undisputed that Petitioner took possession of Respondent, albeit after the 180 day period, pursuant to the IAD.

After the Michigan Court of Appeals reversed the trial court's ruling dismissing the case for violation of the IAD, Respondent filed a timely application for leave to appeal in the Michigan Supreme Court (Petitioner's Appendix C, pg. 27-28A). This constituted an automatic stay of the Court of

Appeal's reversal and the Michigan Supreme Court ruled that ". . . the trial court did not have proper jurisdiction to bring defendant to trial or convict defendant" (Petitioner's Appendix C, pg. 28-29A). Therefore, contrary to Petitioner's assertion that the filing of the application in the Michigan Supreme Court is simply "problematic, but not relevant . . ." (Petition, pg. 9, fn. 2) there exists an adequate and independent jurisdictional state ground for the Michigan Supreme Court's ruling reversing Respondent's conviction.

Since the Michigan Supreme Court's decision does not meet the grounds for granting the Petition (Rule 10 of the Supreme Court of the United States) and there is state jurisdictional ground, as well as application of the doctrine of estoppel, which supports the Michigan Supreme Court's reversal of Respondent's conviction, the Petition for Writ of Certiorari should be denied.

REASONS FOR NOT GRANTING THE WRIT

The Michigan Supreme Court's decision does not meet the grounds for granting the Petition (Rule 10 of the Supreme Court of the United States) and there is state jurisdictional ground, as well as application of the doctrine of estoppel, which supports the Michigan Supreme Court's reversal of Respondent's conviction, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. SINCE IT IS UNDISPUTED THAT PETITIONER LODGED THEIR DETAINER AGAINST RESPONDENT AT THE FEDERAL INSTITUTION WHERE RESPONDENT WAS SERVING A TERM OF IMPRISONMENT, AND BOTH PETITIONER AND RESPONDENT INVOKED ITS TERMS, THE INTERSTATE AGREEMENT ON DETAINERS (IAD) CLEARLY APPLIED AND PETITIONER'S ADMITTED FAILURE TO BRING RESPONDENT TO TRIAL WITHIN 180 DAYS REQUIRED DISMISSAL.

Petitioner asserts that the detainer they filed, misrepresented in the Petition as a "hold,"[1] was only directly sent by them to the U.S. Marshal's while Respondent was a pretrial detainee, and therefore it did not constitute a detainer under the IAD. Petitioner fails and refuses to acknowledge that they subsequently lodged their detainer with the FCI where Respondent was serving his federal sentence by verifying the existence of their detainer, causing their complaint and warrant to be filed with the FCI and then invoking the terms of the IAD. Assuming the detainer they sent to the U.S. Marshals was simply a detainer, Petitioner (and Respondent through his request) clearly converted it to IAD detainer after Respondent entered upon his term of imprisonment. Therefore, the clear and plain language of the IAD applies to this case.

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[1]As noted, Petitioner's document itself specifically refers to it as a detainer. The Michigan Supreme Court (as well as the trial and Michigan Court of Appeals) found it to be a detainer.

Petitioner also argues that the Michigan Supreme Court failed to address whether Petitioner's detainer was an IAD detainer, and that its decision in this case is contrary to authority from this Court and other jurisdictions. That claim is equally unsupported and a review of the Michigan Supreme Court decision clearly refutes this argument.

Ironically, Petitioner also attempts to spread the blame for their negligence in failing to bring Respondent to trial within 180 days, when the undisputed facts show that they explicitly and in writing invoked the terms of the IAD and are responsible, alone, for the ultimate outcome.

Finally, because Respondent was tried without jurisdiction under state court rules and Petitioner is estopped from seeking application of the IAD once they invoked it, there is an independent and adequate state basis for reversal of Respondent's conviction. This Court should deny the Petition.

A. THE INTERSTATE AGREEMENT ON DETAINERS (IAD).

Nothing in the language of the IAD requires that Petitioner file their detainer directly with the institution where Respondent was serving his federal sentence in order for it to be a valid IAD detainer. As the Michigan Supreme Court correctly concluded, a valid detainer for purposes of the IAD exists if that detainer is lodged against the prisoner during the term of his imprisonment.

> [t]here is no requirement in the IAD that the prosecutor initially file the detainer with the institution in which the prisoner is serving his sentence. Article III(a) simply states that it is applicable where "a detainer has been lodged against the prisoner." MCL 780.601. There is no language in the IAD that requires the prosecutor to initially lodge the detainer with any specific institution. (Petitioner's Appendix C, pg. 36A).

This Court has never reached a contrary position. As noted, the Act applies once a "detainer" has been lodged against an inmate. There is no definition of "detainer" in the Act. Generally, although there are no exact parameters for defining a "detainer," it is recognized that notification filed with the institution where the defendant is serving his sentence, advising that he is wanted in another jurisdiction to face pending charges, constitutes a detainer. United States v Mauro, 436 US 340, 359, 98 S Ct 1834, 56 L Ed 2d 329 (1978) (A detainer is "a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction.") The purpose of the detainer is that it "... serves to notify the custodial state to hold the prisoner or inform the notifying state prior to the prisoner's release," *id.* (emphasis added). In Fex v Michigan, 507 US 43, 44, 113 S Ct 1085, 122 L Ed 2d 406 (1993) this Court defined a "detainer" as "... a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency ..."

Because the issuance of a detainer is an informal process, it may be lodged by any person who has the authority to do so. United States v Dixon, 592 F2d 329, 332, fn 3 (6th Cir, 1979). In the state court proceedings, Petitioner conceded as much. "As such, detainers may be filed by the prosecutor, the police, or the sheriff . . ." (Petitioner's Supplemental Brief in Court of Appeals, pg. 15). Once the inmate has invoked his rights under the Act, the 180-day period begins to run once the inmate's notice is received by the officials prosecuting the pending charges. Fex v Michigan, supra.

The IAD facilitates the transfer of prisoners "to the receiving state for trial prior to the termination of his sentence . . ." Alabama v Bozeman, 533 US 146, 148, 121 S Ct 2079, 150 L Ed 2d 188 (2001). Article IX of the IAD mandates that the Act "be liberally construed so as to effectuate its purposes." MCL 780.601. This means the courts should liberally construe the Act in favor of the prisoner it was intended to benefit.

B. APPLICATION.

The relevant case history shows that (1) a detainer was initially lodged with the FCI at Beckley, West Virginia upon the Respondent's arrival; (2) that on March 2, 2005 the Wayne County Prosecutor's Office confirmed their request to lodge a detainer with the FCI where Respondent Swafford was under sentence and caused the clerk of the court to send their Complaint and Warrant to the FCI, (3) Respondent Swafford made the proper request under the IAD, (4) notifications of Respondent's request were sent to the

Wayne County Prosecutor from the FCI, and were received on March 7, 2007 by the prosecutor's office and Clerk of the Court, (5) the FCI expressly acknowledged the lodging of the detainer, (6) that the Wayne County Prosecutor clearly invoked the Act by signing the Agreement on Detainers, (7) more than 180 days lapsed without any action by the Wayne County Prosecutor's Office to bring Respondent Swafford to trial within the time limitation, and (8) the Wayne County Prosecutor's Office ultimately took possession on Respondent under the IAD, albeit after the time limitation imposed under the IAD.

The Michigan Supreme Court, in its unanimous opinion, succinctly found application of the IAD in this case.

> In this case, the Wayne County Prosecutor lodged a detainer against defendant, and while defendant was serving a term of imprisonment at a federal institution, defendant made a written request with the prosecutor for a final disposition of the pending Michigan charges. Thereafter, the prosecutor failed to bring defendant to trial within 180 days as is required by Article III(a) of the IAD. Article V(c) of the IAD, MCL 780.601, states that if a trial is not brought within the period provided in Article III(a), "the . . . court . . . shall enter an order dismissing the [complaint] with prejudice . . ." (Emphasis added.) Therefore, the trial court in this case properly dismissed the charges with prejudice. (Petitioner Appendix C, pg. 31A).

* * * *

IV. CONCLUSION

> The clear language of the IAD, MCL 780.601, states that if the prosecutor fails to bring a defendant to trial within 180 days of receiving the defendant's request for a final disposition made

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> while the defendant is serving a term of imprisonment if a "detainer has been lodged against the prisoner," the court "shall enter an order dismissing the [complaint] with prejudice." Because that is precisely what happened in this case, we reverse the Court of Appeals and reinstate the trial court's order dismissing the charges with prejudice. (Petitioner Appendix C, 41A).

C. PETITIONER'S CLAIMS.

The essence of Petitioner's argument is to freeze in time their initial act of sending the detainer to the U.S. Marshal's and turn a blind eye to everything that happened after words, especially to their own acts. To the extent that Petitioner relies on this Court's decision in Fex, Mauro and Carchman v Nash, 473 US 716, 105 S Ct 3401, 7 L Ed 2d 516 (1985), those cases do not address the precise issue in this case (Fex, 180 day period only commences when prisoner's request for disposition has been actually delivered to the court and prosecutor that lodged the detainer; Mauro, writs of habeas corpus *ad prosequendum* is not a detainer within the meaning of the agreement; Charchman, Art. III does not apply to detainers based on probation violation charges because they are not an indictment, information or complaint based on a criminal offenses).

In addition, since the undisputed record establishes that the detainer in this case was lodged when Respondent was first incarcerated at the FCI and subsequently on March 2, 2005, the other state court decisions cited by

Petitioner are not in opposition to the Michigan Supreme Court decision in the instant case.

Nothing in the IAD suggests that the detainer must have been lodged while the defendant was imprisoned before the IAD applies". Instead, the plain language of the IAD provides first, that "[w]henever a person has entered upon a term of imprisonment and secondly," "whenever during . . . the term of imprisonment there is a pending" charge "of which a detainer has been lodged," the Act applies. The triggering factors are, (1) the incarceration of the person serving a prison sentence, (2) an untried pending charge, and (3) the existence of a detainer that has been lodged against the person. Art. III(a).

The other state cases cited by Petitioner are not in opposite to this analysis applied by the Michigan Supreme Court. Headrick v State, 816 So 2d 517, 524 (Ala. Crim. App., 2001)[2] ("... a person incarcerated in a local jail or holding facility pending imminent transfer to a federal prison is (not) in an 'institution' within the meaning of Mauro and Carchman definition of a detainer and Article IV(a) of the IAD" and "... a detainer was never lodged against Headrick while he was temporarily housed in the Etovah County Jail. . ."); State v Herrick, 686 A2d 602, 604 (ME, 1996) ("once an effective

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[2]Headrick is a decision by the Court of Criminal Appeal in Alabama and therefore is not a state court of last resort as required by Rule 10 of the Rules of this Court.

detainer was lodged against Herrick (while he was serving a prison sentence) and he invoked his rights under the IAD, he was brought to trial within 180 days"); State v Hargrove, 45 P3d 376, 383 (Kan, 2002) ("The hold or detainer requested against a pretrial detainer remains effective, it just does not trigger the Agreement at that time.") (emphasis added).

Finally, Petitioner asserts that others are responsible for their malfeasance and the outcome. The claim that the Marshal should not have lodged the detainer by forwarding it to the Bureau of Prisons flies in the face of common sense. Petitioner never lifted the detainer. Of course, they wanted Respondent returned to Michigan to stand trial on the murder charges and not release. One could only imagine the finger pointing and fallout had the Marshal's not forwarded the detainer and Respondent had been released after serving his federal sentence, especially if he committed another crime, upon his release. Law enforcement agencies routinely honor detainers which, in effect, attach to the prisoner and continue with him at every facility he is housed at until such time as the requesting agency "lifts" or removes it.

Since the FCI had the actual detainer in their possession, Petitioner verified their detainer and caused their complaint and warrant to be sent to the FCI, it makes no sense whatsoever, to "file" the detainer once again at

the FCI as Petitioner suggests. Finally, having clearly invoked the Act, Petitioner is now estopped from claiming that the Act does not apply.

In summary, the plain language of the Act and common sense dictates the result reached by the Michigan Supreme Court.

II. THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THE MICHIGAN SUPREME COURT DECISION BECAUSE THE TRIAL COURT LACKED JURISDICTION TO PROCEED TO TRIAL UNDER STATE COURT RULES AND THE DOCTRINE OF ESTOPPEL APPLIES GIVEN PETITIONER'S AGREEMENT TO BE BOUND BY THE IAD IN THIS CASE.

The trial court dismissed the charges on January 26, 2006 for violation of the IAD. On March 27, 2007, the Court of Appeals reversed and remanded (Petitioner's Appendix A).

On May 14, 2007, Respondent filed a timely pro per application for leave to appeal. MCR 7.215(F)(1)(a) provides in relevant part:

> The Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court. (Emphasis added).

In the meantime, the trial court proceeded to a jury trial and Respondent was convicted on September 12, 2007. However, the Court of Appeal's opinion was never legally effective, and ultimately the Michigan Supreme Court reversed the Court of Appeals on September 21, 2007. Thus, at the time of Respondent's jury trial, the only valid order was the trial court's dismissal with prejudice and having dismissed the case, there was no

jurisdiction to proceed to trial. The Michigan Supreme Court explicitly found,

> Accordingly, the trial court did not have proper jurisdiction to bring defendant to trial or convict defendant (Petitioner's Appendix C, pg. 25A).[3]

In addition, the Michigan Supreme Court found that Petitioner invoked the IAD.

> Finally, the facts of this case make it clear that both parties invoked the IAD for purposes of bringing defendant to trial (Petitioner's Appendix C, pg. 38A).

The Michigan Supreme Court summarized their factual findings as follows:

> In this case, it is utterly clear that the prosecutor lodged a detainer against defendant, that both the Bureau of Prisons and defendant were aware of this detainer, that the prosecutor was aware that the Bureau of Prisons was in possession of the detainer, and that defendant caused a written request for a final disposition to be delivered to the prosecutor and the court while defendant was serving a term of imprisonment. Therefore, the IAD is clearly applicable, and Article III(A) was indisputably violated when defendant was not brought to trial within the proper time frame. (Petitioner's Appendix C, pg. 40-41a).

Since Petitioner invoked the IAD and agreed to its terms and conditions, they are estopped from seeking to avoid its application.

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[3]During oral argument several sections of the Michigan Supreme Court expressed doubt whether Petitioner could ever be tried again without violating his double jeopardy protections.

Given an adequate and independent state ground for the Michigan Supreme Court's reversal of Respondent's conviction, this Court lacks jurisdiction to grant review on a federal question, as it is moot and the Court does not issue advisory opinions. See Fay v Noia, 372 US 391, 340, 83 S Ct 822, 9 L Ed 2d 837 (1963).

CONCLUSION

The Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Dated: May 5, 2009